

CD-ROM Draft Copy

Last printed 7/2/2008 12:58:00 PM

08 safety bill 623

*** Bill No. ***

Introduced By *****

By Request of the Department of Labor and Industry

A Bill for an Act entitled: "An Act generally revising Montana occupational safety and health laws by modernizing language and procedures; limiting applicability and enforcement of certain provisions to public sector employers and employees; providing for monetary penalties; providing for safety consultation services; limiting liability for negligence in conducting inspections, safety consultation services, and training; clarifying the department's duties with respect to inspections of coal mines; requiring coal mine operators to post copies of department inspection reports; amending sections 39-71-1503, 50-73-102, 50-73-406, and 50-73-409, MCA; repealing sections 50-70-101, 50-70-102, 50-70-103, 50-70-104, 50-70-105, 50-70-106, 50-70-107, 50-70-108, 50-70-109, 50-70-110, 50-70-111, 50-70-112, 50-70-113, 50-70-114, 50-70-115, 50-70-116, 50-70-117, 50-71-101, 50-71-102, 50-71-103, 50-71-104, 50-71-105, 50-71-106, 50-71-107, 50-71-108, 50-71-109, 50-71-110, 50-71-201, 50-71-202, 50-71-203, 50-71-301, 50-71-302, 50-71-303, 50-71-311, 50-71-312, 50-71-313, 50-71-

CD-ROM Draft Copy

Last printed 7/2/2008 12:58:00 PM

08 safety bill 623

314, 50-71-315, 50-71-316, 50-71-321, 50-71-322, 50-71-323, 50-71-324, 50-71-325, 50-71-326, 50-71-327, 50-71-331, 50-71-332, 50-71-333, and 50-71-334, MCA; and providing an effective date."

WHEREAS, Montana's general occupational safety act, the Montana Safety Act, was enacted in 1969, prior to the adoption of the federal Occupational Safety and Health Act of 1970; and

WHEREAS, as a result of the enactment of the federal Occupational Safety and Health Act of 1970, the regulation of occupational safety and health matters in most private sector employment has been generally preempted by federal law, and those laws are administered and enforced by the federal Occupational Safety and Health Administration (OSHA); and

WHEREAS, since the creation of OSHA, the state's role in enforcing occupational safety and health laws and rules, other than in mining, has been limited to public sector employment, although the Montana Safety Act does not reflect that reality; and

CD-ROM Draft Copy

Last printed 7/2/2008 12:58:00 PM

08 safety bill 623

WHEREAS, the Montana Safety Act contains various archaic rulemaking and hearings provisions because it was enacted prior to the adoption of the Montana Administrative Procedure Act; and

WHEREAS, the 1971 Occupational Health Act of Montana suffers from many of the same jurisdictional and procedural flaws as does the Montana Safety Act; and

WHEREAS, it is appropriate to modernize Montana's occupational safety and health laws and consolidate them into a unified body of law that reflects the scope of state regulation of occupational safety and health matters as being limited to public sector employment.

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 13] may be cited as the "Montana Occupational Safety and Health Act".

CD-ROM Draft Copy

Last printed 7/2/2008 12:58:00 PM

08 safety bill 623

NEW SECTION. **Section 2. Definitions.** As used in

[sections 1 through 14] the following definitions apply:

(1) "Department" means the department of labor and industry provided for by 2-15-1701.

(2) "Employee" is defined in 39-71-117.

(3) "Employer" is defined in 39-71-118.

(4) "Inspection" means an on-site review by the department of a workplace for compliance with standards.

(5) "Health" means protection against occupational illnesses.

(6) "Public sector employer" means:

(a) the State of Montana;

(b) each county in the state;

(c) each municipality in the state;

(d) the university system;

(e) each school district; and

(f) any other political subdivision of the state.

(7) "Private sector employer" means any employer that is not a public sector employer. The term includes both for-profit and not-for-profit entities.

(8) "Safety" means protection against occupational injury or death.

CD-ROM Draft Copy

Last printed 7/2/2008 12:58:00 PM

08 safety bill 623

(9) "Safety consultation services: has the same meaning as provided for in 39-71-1503.

(10) "Standard" means a rule adopted by the department pursuant to [sections 1 through 14] designed to promote or ensure safety or health in the workplace.

(11) "Workplace" means any site or location where an employee performs work for the employee's employer.

NEW SECTION. **Section 3. Administrative powers -**

funding. (1) The department is vested with full power and jurisdiction to administer the provisions of [sections 1 through 14].

(2) In addition to the various activities authorized by [sections 1 through 14] the department, in its discretion, may:

- (a) promote occupational safety and health;
- (b) train employers and employees in occupational safety and health matters;
- (c) conduct research regarding occupational safety and health data, topics, and techniques; and
- (d) investigate occupational injuries, illnesses, and deaths involving employees of public sector employers.

CD-ROM Draft Copy

Last printed 7/2/2008 12:58:00 PM

08 safety bill 623

(3) The activities of the department in administering the provisions of [sections 1 through 14] are funded by the administration fund provided in 39-71-201.

(4) The department may accept, receive, and administer gifts, grants, or other funds from public or private agencies, including the United States, for the purpose of carrying out the provisions of [sections 1 through 14]. Funds received by the department under this section must be deposited into the administration fund provided in 39-71-201.

NEW SECTION. **Section 4. Rulemaking authority.**

(1) The department may adopt as administrative rules appropriate standards for safety and health.

(a) The department may adopt as a standard any safety or health regulations promulgated by the federal occupational safety and health administration (OSHA).

(b) The department may adopt other standards that are not inconsistent with federal safety and health regulations.

(2) The department may, by rule, provide a procedure to grant a temporary variance from the particular provisions of a standard and permit the use of other or

CD-ROM Draft Copy

Last printed 7/2/2008 12:58:00 PM

08 safety bill 623

different devices or methods than provided by the standard.

A temporary variance may be granted only if the public sector employer:

- (a) has an effective program for complying with the standard as quickly as practicable;

- (b) is taking all available steps to safeguard employees against the hazards covered by the standard; and

- (c) is unable to comply with the standard because:

- (i) of the unavailability of professional or technical personnel needed to comply with the standard;

- (ii) of the unavailability of materials and equipment needed to comply with the standard; or

- (iii) necessary construction or alteration of facilities cannot be completed by the effective date of the standard.

- (3) The department may adopt other rules as are necessary or convenient for the implementation of [sections 1 through 14].

NEW SECTION. **Section 5. Applicability of standards.**

The standards for safety and health adopted pursuant to [sections 1 through 14] apply to all public sector employers in this state and to all public sector employees

CD-ROM Draft Copy

Last printed 7/2/2008 12:58:00 PM

08 safety bill 623

in this state. Standards and enforcement rules adopted pursuant to [sections 1 through 14] do not apply to employment by:

- (1) private sector employers;
- (2) the federal government and its instrumentalities;
- (3) a federally recognized Indian tribe; or
- (4) an Indian tribe recognized by the state.

NEW SECTION. **Section 6. Duties of employers and employees.** (1) Each public sector employer shall:

(a) furnish a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to the employer's employees;

(b) adopt and use practices, means, methods, operations, and processes that are adequate to render the place of employment safe; and

(c) take appropriate actions necessary to protect the life, health, and safety of employees.

(2) Each public sector employee shall comply with the safety and health standards, rules, and orders issued pursuant to [sections 1 through 14] which are applicable to the employee's own actions and conduct.

CD-ROM Draft Copy

Last printed 7/2/2008 12:58:00 PM

08 safety bill 623

NEW SECTION. **Section 7. Employer records and reports.**

(1) Each public sector employer shall maintain such records of occupational injuries, illnesses, and deaths as the department may require by rule. The department may inspect those records or require that the public sector employer submit those records to the department for its review.

(2) In the absence of specific rules to implement this section, a public sector employer complies with the requirements of this section if it submits an employer's first report of injury (FROI) form to the department or to the employer's worker's compensation insurer within 30 days of the public sector employer becoming aware of an occupational injury, illness, or death being suffered by its employee.

NEW SECTION. **Section 8. Inspections.** (1) The department may inspect the workplaces of any public sector employer for the purpose of determining whether the public sector employer is in compliance with the safety and health standards that apply to the employer and the employer's workplaces. A department employee conducting an inspection

CD-ROM Draft Copy

Last printed 7/2/2008 12:58:00 PM

08 safety bill 623

shall, upon request, present appropriate credentials to the public sector employer.

(2) An inspection may be performed:

(a) periodically;

(b) at the request of the public sector employer;

(c) as the result of a complaint by a public sector employee or a representative of the labor organization that is the exclusive representative of the public sector employees, of a violation of a safety or health standard at a public sector employer's workplace;

(d) as part of a department investigation following a report of an occupational injury, illness, or death; or

(e) following the issuance of a citation, after the employer has been given a reasonable opportunity to correct any violation of standards.

(3) A public sector employer shall not interfere with a department inspection conducted pursuant to this section.

(4) The department may not unreasonably interfere with the operations of a public sector employer while conducting an inspection. The department may conduct an inspection of a worksite without scheduling the inspection with the public sector employer. The fact that an inspection was not scheduled in advance does not constitute

CD-ROM Draft Copy

Last printed 7/2/2008 12:58:00 PM

08 safety bill 623

unreasonable interference with the public sector employer's operations.

(5) Nothing in this section authorizes a department inspector to breach the peace in making or attempting to make an inspection.

NEW SECTION. **Section 9. Record of inspection - violations - penalty - appeal rights.** (1) The department shall make a written record of each inspection it conducts.

(a) The inspection record must include a list of any violations of standards that the inspector discovered during the inspection. A violation of a standard by a public sector employee is attributable to the employee's employers.

(b) The department shall provide a copy of the inspection record to the public sector employer.

(2) The department may issue a written citation to the public sector employer for a violation of a standard. The citation must specify the:

- (a) nature of the violation;
- (b) standard alleged to have been violated; and
- (c) time in which the employer must correct the violation.

CD-ROM Draft Copy

Last printed 7/2/2008 12:58:00 PM

08 safety bill 623

(3) The department may impose upon a public sector employer a monetary penalty of not more than \$1,000 for each violation for which a citation has been issued. Any monetary penalty must be noted on the citation.

(a) The department may, in its sole discretion, waive or reduce a penalty if the public sector employer timely corrects or cures the violation for which the penalty was imposed.

(b) Monetary penalties collected pursuant to this section must be deposited into the administration fund provided in 39-71-201.

(4) A public sector employer may appeal a citation or a penalty. An appeal to the department must be in writing and made within 30 days of the issuance of the citation. The appeal of a citation or a penalty is conducted as a contested case under Title 2, chapter 4.

NEW SECTION. **Section 10. Stop work orders.** (1) The department may order a public sector employer to immediately and temporarily stop work at a particular workplace if, in the judgment of a department inspection who has personally observed the workplace and the hazards present:

CD-ROM Draft Copy

Last printed 7/2/2008 12:58:00 PM

08 safety bill 623

(a) the conditions or operations present at the workplace constitute a violation of a standard established by the department;

(b) the violation poses an immediate and substantial risk of serious bodily injury or death to an employee or a member of the public; and

(c) the public sector employer, or the employees present at the workplace, are unable or unwilling to:

(i) immediately correct the violation; or

(ii) suspend the unsafe operations until the violation is corrected.

(2) The temporary stop order must be in writing and specify:

(a) the location of the workplace;

(b) the specific standard which is being violated;

(c) the nature of the risk posed by the violation;

(d) the date and time the stop work order is being issued; and

(e) the name, address, and telephone number of the person issuing the temporary stop work order.

(3) The temporary stop work order is effective as soon as it is communicated to any one of the following:

CD-ROM Draft Copy

Last printed 7/2/2008 12:58:00 PM

08 safety bill 623

(a) the public sector employer's on-site supervisor
at the workplace;

(b) the public sector employer's manager in charge of
workplace operations; or

(c) the chief executive of the public sector
employer.

(4) A copy of the temporary stop work order must be
promptly posted by the department at the workplace. A
posted temporary stop work order may not be removed by any
person while it is in effect.

(5) A temporary stop work order is effective for 72
hours unless:

(a) the violation is corrected to the satisfaction of
the department; or

(b) the temporary stop work order is stayed by order
of a district court judge, following actual notice to the
department and the public sector employer.

(6) The violation of a temporary stop work order or
the unauthorized removal of a posted copy of a temporary
stop work order is punishable as a contempt of court.

(7) As used in this section, the term "serious bodily
injury" has the same meaning as provided in 45-2-101.

CD-ROM Draft Copy

Last printed 7/2/2008 12:58:00 PM

08 safety bill 623

NEW SECTION. **Section 11. Injunctive relief available.**

In addition to any remedies available under [sections 1 through 14], the department may institute and maintain in the name of the state an action for injunctive relief as provided in Title 27, chapter 19, to:

(1) immediately restrain a public sector employer and its employee from engaging in any activity for which the department has issued a temporary stop work order pursuant to [section 10];

(2) enjoin a violation of [sections 1 through 14];

(3) enjoin a violation or a rule, including a safety or health standard, adopted under [sections 1 through 14];
or

(4) require compliance with [section 1 through 14], including compliance with any rules adopted under [sections 1 through 14].

NEW SECTION. **Section 12. Safety consultation services.**

The department may, in its sole discretion, provide on-site safety consultations services to public sector employers and private sector employers desiring such services.

CD-ROM Draft Copy

Last printed 7/2/2008 12:58:00 PM

08 safety bill 623

NEW SECTION. **Section 13. Retaliation prohibited.** A public sector employer may not retaliate against an employee who:

- (1) contacts the department with a complaint of a violation of a safety or health standard in the workplace;
- (2) cooperates with the department in the performance of an inspection or investigation; or
- (3) testifies or cooperates with the department in any case arising out of:
 - (a) an inspection;
 - (b) an investigation;
 - (c) a citation;
 - (d) a temporary stop work order; or
 - (e) a suit seeking injunctive relief.

NEW SECTION. **Section 14. No liability for negligence in inspections, safety consultations, or training.** (1) In recognition of the primary obligation of a public sector employer to comply with safety and health standards, the department is not liable for its negligent failure to:

- (a) inspect a particular public sector employer's workplaces;

CD-ROM Draft Copy

Last printed 7/2/2008 12:58:00 PM

08 safety bill 623

(b) investigate a report of an occupational injury, illness, or death of a public sector employee;

(c) observe or note a violation of a standard;

(d) issue a citation for a violation;

(e) issue a temporary stop work order; or

(f) seek injunctive relief.

(2) In recognition of the obligation of an employer to comply with its safety and health obligations to its employees, and of the availability of safety consultation services from the employer's workers' compensation insurer, the department is not liable for:

(a) failure to provide safety consultation services; or

(b) its negligent performance of safety consultation services.

(3) In recognition of the obligation of an employer to comply with its safety and health obligations to its employees by providing appropriate safety and health training, the department is not liable for its negligent performance of any safety or health training it offers.

Section 15. Section 39-71-1503 , MCA, is amended to read:

CD-ROM Draft Copy

Last printed 7/2/2008 12:58:00 PM

08 safety bill 623

"39-71-1503. Safety consultation. (1) As used in this part, "safety consultation services" means assistance rendered by an insurer or the department to advise and aid an insured employer in the identification, evaluation, and control of existing and potential accidental and occupational health problems. The services may be delivered in person, by mail, or by telephone, based upon need.

(2) Safety consultation services include but are not limited to:

(a) surveys consisting of onsite identification and subsequent evaluation of exposures relative to employees, materials, equipment, work methods, processes, and facilities;

(b) recommendations expressed in the form of communications to an insured employer, with reference to control of exposures to occupational accident, injury, or illness and to improvement of safety programs and systems;

(c) training programs, including aids, programs, and materials made available to assist in the control of exposures;

(d) consultations to advise insured employers relative to risk, exposure, and experience in the insured employer's business;

CD-ROM Draft Copy

Last printed 7/2/2008 12:58:00 PM

08 safety bill 623

(e) accident analysis consisting of review of reported accidents to determine cause and trends; and

(f) industrial hygiene services, including recognition, evaluation, and control of chemical, physical, and biological exposures."

{Internal References to 39-71-1503: None }

Section 16. Section 50-73-102, MCA, is amended to read:

"50-73-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Department" means the department of labor and industry and the state coal mine inspectors employed by the department.

(2) "Excavations" and "workings" mean all parts of a mine excavated or being excavated, including shafts, slopes, tunnels, entries, rooms, and working places, whether abandoned or in use.

(3) "Gassy mine" means a mine is considered to be potentially gassy. The department may further define this term in its rules.

CD-ROM Draft Copy

Last printed 7/2/2008 12:58:00 PM

08 safety bill 623

(4) "Mine" and "coal mine" mean all parts of the property of a mining plant under one management which contribute, directly or indirectly, to the mining or handling of coal.

(5) "Mine examiner" means a person charged with the examination of the condition of the mine before the miners are permitted to enter it and who is commonly known as the "fire boss".

(6) "Mine foreman" means a person who is charged with the general direction of the underground work or both the underground work and the outside work of a coal mine and who is commonly known and designated as "mine boss".

(7) "Operator", as applied to the party in control of a mine under this chapter, means the person, firm, or body corporate which is the immediate proprietor as owner or lessee of the plant and, as such, is responsible for the condition and management thereof.

(8) "Shaft" means any vertical opening through the strata which is or may be used for the purpose of ventilation or escape or for hoisting or lowering of men or material in connection with the mining of coal.

CD-ROM Draft Copy

Last printed 7/2/2008 12:58:00 PM

08 safety bill 623

(9) "Slope" and "drift" mean respectively an incline or horizontal way, opening, or tunnel to a seam of coal to be used for the same purpose as a shaft.

(10) "Written inspection report" means a report prepared by a department inspector identifying safety and health hazards noted during an inspection of a mine. The term includes any citation or order issued by the department that refers to a violation of safety or health standards at the mine."

{Internal References to 50-73-102: None }

Section 17. Section 50-73-406, MCA, is amended to read:

"50-73-406. Minimum inspection intervals. The department shall carefully examine all the coal mines in operation in this state at least ~~every 3 months~~ quarterly and more often if necessary to see that every precaution is taken to insure the safety of all workers that may be engaged in the coal mine. The department shall make a record of the visit, noting the time and the material circumstances of the inspection."

{Internal References to 50-73-406: None }

CD-ROM Draft Copy

Last printed 7/2/2008 12:58:00 PM

08 safety bill 623

Section 18. Section 50-73-409, MCA, is amended to read:

"50-73-409. ~~Department~~ Operator to post statement of conditions ~~at some conspicuous location.~~ (1) The department operator shall post ~~in some conspicuous location the~~ written inspection report at each mine visited and inspected by ~~it a plain statement of the conditions of the~~ mine showing what in its judgment is necessary for the better protection of the lives and health of persons employed in the mine ~~the department.~~ The ~~statement~~ written inspection report, signed by the department inspector, shall must give the date of inspection. ~~Where a local union has jurisdiction over the mine inspected, the~~ department shall post three copies of the statement of conditions ~~within 1 week after making the inspection.~~ The written inspection report must be posted in conspicuous location where:

- (a) it is likely to be seen by the mine workers; and
- (b) it can be read by any interested mine worker.

(2) ~~It~~ The operator shall also post a ~~copy~~ notice at the landing used by the workers stating what number of workers may be permitted to ride on the cage, car, or cars at one time."

CD-ROM Draft Copy

Last printed 7/2/2008 12:58:00 PM

08 safety bill 623

{Internal References to 50-73-409: None }

NEW SECTION. **Section 19. {standard} Repealer.** Sections 50-70-101, 50-70-102, 50-70-103, 50-70-104, 50-70-105, 50-70-106, 50-70-107, 50-70-108, 50-70-109, 50-70-110, 50-70-111, 50-70-112, 50-70-113, 50-70-114, 50-70-115, 50-70-116, 50-70-117, 50-71-101, 50-71-102, 50-71-103, 50-71-104, 50-71-105, 50-71-106, 50-71-107, 50-71-108, 50-71-109, 50-71-110, 50-71-201, 50-71-202, 50-71-203, 50-71-301, 50-71-302, 50-71-303, 50-71-311, 50-71-312, 50-71-313, 50-71-314, 50-71-315, 50-71-316, 50-71-321, 50-71-322, 50-71-323, 50-71-324, 50-71-325, 50-71-326, 50-71-327, 50-71-331, 50-71-332, 50-71-333, and 50-71-334, MCA, are repealed.

{Internal References to 50-70-101: None
Internal References to 50-70-102: None
Internal References to 50-70-103: None
Internal References to 50-70-104: None
Internal References to 50-70-105: None
Internal References to 50-70-106: None
Internal References to 50-70-107: None
Internal References to 50-70-108: None
Internal References to 50-70-109: None
Internal References to 50-70-110: None
Internal References to 50-70-111: None
Internal References to 50-70-112: None
Internal References to 50-70-113: None
Internal References to 50-70-114: None
Internal References to 50-70-115: None
Internal References to 50-70-116:
50-70-117r 50-70-117r
Internal References to 50-70-117:
50-70-111r 50-70-114r
Internal References to 50-71-101: None

CD-ROM Draft Copy

Last printed 7/2/2008 12:58:00 PM

08 safety bill 623

Internal References to 50-71-102: None
Internal References to 50-71-103: None
Internal References to 50-71-104: None
Internal References to 50-71-105: None
Internal References to 50-71-106: None
Internal References to 50-71-107: None
Internal References to 50-71-108: None
Internal References to 50-71-109: None
Internal References to 50-71-110: None
Internal References to 50-71-201: None
Internal References to 50-71-202: None
Internal References to 50-71-203: None
Internal References to 50-71-301: None
Internal References to 50-71-302: None
Internal References to 50-71-303: None
Internal References to 50-71-311: None
Internal References to 50-71-312: None
Internal References to 50-71-313: None
Internal References to 50-71-314: None
Internal References to 50-71-315: None
Internal References to 50-71-316: None
Internal References to 50-71-321: None
Internal References to 50-71-322: None
Internal References to 50-71-323: None
Internal References to 50-71-324: None
Internal References to 50-71-325: None
Internal References to 50-71-326: None
Internal References to 50-71-327: None
Internal References to 50-71-331: None
Internal References to 50-71-332: None
Internal References to 50-71-333: None
Internal References to 50-71-334: None}

NEW SECTION. **Section 20. {standard} Saving clause.**

[This act] does not affect rights and duties that matured,
penalties that were incurred, or proceedings that were
begun before [the effective date of this act].

CD-ROM Draft Copy

Last printed 7/2/2008 12:58:00 PM

08 safety bill 623

NEW SECTION. **Section 21. {standard} Codification.**

[Sections 1 through 14] are intended to be codified as an integral part of Title 50, and the provisions of Title 50, apply to [sections 1 through 14].

NEW SECTION. **Section 22. Two-thirds vote required.**

Because [section 14] limits government liability, Article II, section 18, of the Montana constitution requires a two-thirds vote of the members of each house of the legislature for passage.

NEW SECTION. **Section 23. {standard} Effective date.**

[This act] is effective July 1, 2009.

-END-

prepared by:

Mark Cadwallader
Agency Counsel
Dept. of Labor and Industry
406.444.0280 (voice)
406.444.1394 (fax)
mcadwallader@mt.gov